

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 19, 2005

IN RE:)	
)	
PETITION FOR APPROVAL OF THE)	DOCKET NO.
INTERCONNECTION AGREEMENT)	04-00128
BETWEEN JACKSON ENERGY AUTHORITY)	
AND AENEAS COMMUNICATIONS, LLC)	

**ORDER APPROVING
INTERCONNECTION AGREEMENT**

This matter came before Chairman Pat Miller, Director Deborah Taylor Tate and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on August 30, 2004, to consider the *Petition for Approval of the Interconnection Agreement Negotiated Between Aeneas Communications, LLC and Jackson Energy Authority Pursuant to the Telecommunications Act of 1996* ("Petition") filed on April 27, 2004.

BACKGROUND

The *Petition* requests approval of the Interconnection Agreement (the "Agreement") negotiated between two Competing Local Exchange Carriers ("CLECs"), Aeneas Communications, LLC ("Aeneas") and Jackson Energy Authority ("JEA"). The Agreement provides for the interconnection of the networks of the two parties and includes rates, terms and conditions for that interconnection. The Authority has not previously determined whether an interconnection agreement negotiated between two CLECs must be submitted for approval

pursuant to the federal Telecommunications Act of 1996 (the “Act”). Nevertheless, the parties have filed this Agreement with the Authority for approval pursuant to Sections 251 and 252 of the Act.¹

Section 251(a) of the Act clearly states that each telecommunications carrier has the general duty to interconnect with the facilities and equipment of other telecommunications carriers and not to install network features, functions, or capabilities that do not comply with Sections 255 or 256 of the Act.

Section 252(a)(1) of the Act addresses agreements that have been arrived at through negotiation and provides as follows:

(1) VOLUNTARY NEGOTIATIONS. – Upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before February 8, 1996, shall be submitted to the State commission under subsection (e) of this section.

Regarding approval of a state commission of an interconnection agreement, Section 252(e)(1) states as follows:

(1) APPROVAL REQUIRED. – Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

Section 252(e)(2) sets forth the criteria for a state commission’s review of negotiated agreements by establishing the following:

¹ *Petition*, p 1 (April 27, 2004)

The State commission may only reject –

- (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that –
 - (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
 - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity; or
- (B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section if it finds that the agreement does not meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title, or the standards set forth in subsection (d) of this section.

Section 251(d)(3) of the Act provides that the Act does not preclude state commissions from enforcing state regulations, orders or policies that establish interconnection obligations.

Specifically Section 251(d)(3) states:

In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that –

- (A) establishes access and interconnection obligations of local exchange carriers;
- (B) is consistent with the requirements of this section; and
- (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

Tennessee statutes address interconnection between “telecommunications service providers.” Tenn Code Ann. § 65-4-124(a) provides:

All telecommunications services providers shall provide non-discriminatory interconnection to their public networks under reasonable terms and conditions; and all telecommunications services providers shall, to the extent that it is technically and financially feasible, be provided desired features, functions and services promptly, and on an unbundled and non-discriminatory basis from all other telecommunications services providers.

Tenn. Code. Ann. § 65-4-124(a) does not limit interconnection obligations to incumbent carriers. The statute applies to all telecommunications services providers.² Further TRA Rule 1220-4-8-.04(3)(c)(2) requires all certificated CLECs to provide interconnection with other certified carriers or authorized carriers on a nondiscriminatory basis under reasonable terms and conditions.³

FINDINGS AND CONCLUSIONS

Section 252(a) of the Act refers specifically to agreements negotiated between ILECs and CLECs, however, the language in Section 251(a) of the Act does not restrict interconnection to an ILEC and a CLEC. Further, the TRA has the authority under state law to ensure that interconnection agreements, in general, are nondiscriminatory and contain reasonable terms and conditions, and such review by the TRA of a CLEC to CLEC interconnection agreement is not preempted, as provided for in Section 251(d)(3) of the Act.

Although the *Petition* states that the parties have submitted this Agreement to the Authority for approval pursuant to the Act, the TRA has the authority to review and approve this Agreement pursuant to the state law. Upon reviewing the Agreement filed by the parties, the Authority finds that the Agreement is nondiscriminatory and contains reasonable terms and

² “Telecommunications services provider” is defined in Tenn Code Ann § 65-4-101(8) (2004) as follows
‘Telecommunications service provider’ means any incumbent local exchange telephone company or certified individual or entity, or any individual or entity operating pursuant to the approval by the former public service commission of a franchise within § 65-4-207(b), authorized by law to provide, and offering or providing for hire, any telecommunications service, telephone service, telegraph service, paging service, or communications service similar to such services unless otherwise exempted from this definition by state or federal law

³ TRA Rule 1220-4-8- 04(3)(c)(2) provides as follows

(c) All telecommunications service providers certified pursuant to this rule shall at a minimum be required to

(2) Provide interconnection with other certificated carriers or Authority authorized carriers on a nondiscriminatory basis under reasonable terms and conditions,

conditions pursuant to Tenn. Code Ann. § 65-4-124(a). Based upon a review of the Agreement and the record in this matter, the panel voted unanimously to grant the *Petition* and made the following findings and conclusions of law:

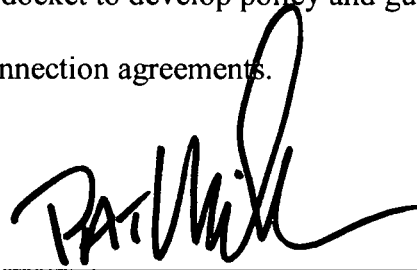
- 1) The Agreement is in the public interest as it provides consumers with alternative sources of telecommunications services within the affected service area.
- 2) The Agreement is not discriminatory to telecommunications service providers that are not parties thereto.
- 3) No person or entity has sought to intervene in this docket.
- 4) The Agreement is reviewable by the Authority pursuant to Tenn. Code Ann. § 65-4-124.

Based on the foregoing findings and conclusions, the panel voted unanimously to approve the Agreement as filed with the Authority. The Authority's approval of the agreement fulfills any obligation of the Authority set forth in 47 U.S.C. § 252(e). Nevertheless, the Authority's approval of this Agreement is not intended to establish a requirement that all future agreements negotiated between competitive local exchange carriers be submitted to the Authority for review. The panel voted further to open a generic docket to develop policy and guidelines for the submission and review of CLEC-to-CLEC interconnection agreements.

IT IS THEREFORE ORDERED THAT:

1. The *Petition* is granted and the Interconnection Agreement negotiated between Jackson Energy Authority and Aeneas Communications, LLC is approved and is subject to the review of the Authority as provided herein.

2. The Authority shall open a generic docket to develop policy and guidelines for the submission and review of CLEC-to-CLEC interconnection agreements.

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Pat Miller, Chairman

A handwritten signature in black ink, appearing to read "Deborah Taylor Tate", written over a horizontal line.

Deborah Taylor Tate, Director

A handwritten signature in black ink, appearing to read "Sara Kyle", written over a horizontal line.

Sara Kyle, Director